

# EEO 2019

Wisconsin Broadcasters Association Convention  
June 12, 2019

David Oxenford  
Wilkinson Barker Knauer, LLP  
Washington DC  
202-383-3337  
doxenford@wbklaw.com  
[www.wbklaw.com](http://www.wbklaw.com)  
[www.broadcastlawblog.com](http://www.broadcastlawblog.com)

WILKINSON ) BARKER ) KNAUER ) LLP

# What You Need To Remember About FCC EEO Obligations

- Non-Discrimination, plus affirmative action
- Three Pronged Recruitment Requirements
  - Wide Dissemination – only requirement changed so far
  - Notice to Community Groups
  - Supplemental Efforts – “Non-vacancy specific outreach efforts”
- Record-keeping Requirements
- Reporting Requirements
- Advertising Nondiscrimination

# Who Needs to Worry About EEO?

- Nondiscrimination requirements apply to all stations
- Outreach requirements apply to all stations with 5 or more full-time employees
- Full-time for the FCC is 30 hours per week
- Commercial and noncommercial
- Employee count based on an “employment unit” – all commonly controlled stations in same area with at least one common employee

# Why you need to worry about EEO

- Random Audits – 5% of all stations each year
- License Renewal – to be filed August 1, 2020 for radio, TV the next year
- Mid-Term Review
- Upcoming FCC review of enhancing EEO enforcement
  - EEO now in Enforcement Bureau

# Shout It From the Mountaintops-- Wide Dissemination

- Applies To All Station Employment Units With Five or More Fulltime Employees
- Not Restricted To The Recruitment of Minorities and Women -- Applies To All Community Groups
- Used to require outreach to community groups, educational organizations and print media

# Wide Dissemination-- What's It all About?

- Recruitment for *ALL* Full-time Job Openings Unless There are “Exigent Circumstances” – and the FCC really means *all* openings
- Outreach to Notify Entire “Community”
- Community Defined By Broadcaster - Based on Service Area

# Wide Dissemination-- Do I Really Have to Do That?

- Exigent Circumstances
- Specialized Positions
- Internal Promotions
- Part-timers and Temporary Employees
- No Recruitment If Hire from Pool Developed for the Same Job Opening and Applications Are “Viable” – probably no older than about 90 days
- No Recruitment Necessary for Employment of Owner of 20% or More of Licensee

# Now Can Rely Simply on Online Sources

- FCC used to forbid reliance simply on online sources
- Now can reach out to online source you reasonably believe reaches all groups within your community – and that is it!
- No need to require on other real-world sources – but FCC *encourages* but does not require the use of other media, community groups, employment agencies, schools
- There have still been fines for stations that don't keep records of what they do



# They Asked For It...

## Notification of Community Groups

- Not changed by recent decision
- Still must notify groups who ask to be informed of Job Openings
- You choose method of notification
- Must Publicize Ability to Be Added to List - Broadcast or Newspaper Notice
- A Group is on the List Until They Say “Stop”
- FCC has fined stations for not notifying community groups who asked for notice

# Menu Options-- One Size Does Not Fit All

- Employment units with 5 to 10 employees must do at least two activities every two years – “non-vacancy specific outreach efforts” – obligation still in effect
- Employment units in smaller markets must do at least two activities every two years – smaller market is one in metropolitan area of less than 250,000 people
- Employment Units in larger markets with more than 10 employees must do at least four activities every two years
- Over-achieve - do more than required in case FCC disallows a claimed activity - activities must be “significant” to count

# I'll Take One From Column A...

## Menu Options

- Participation in four job fairs
- Co-sponsoring at least one Job Fair with a business or professional group with substantial minority or female membership
- Participation in four activities sponsored by community groups active in employment issues, e.g. career days, conventions, workshops
- Hosting at least One Job Fair
- Scholarship program
- Internship Programs
- Participation in four activities by educational institutions relating to broadcast employment
- Sponsoring two community activities to educate public on broadcast employment

# Or One From Column B...

## More Menu Options

- Participation in non-vacancy specific outreach efforts, such as job banks or Internet programs, including State Broadcast Association Programs
- Listing All Upper Level Jobs with newsletter of trade organization with substantial participation of minorities and women
- Assisting non-profit entities in developing web sites on broadcast employment
- Mentoring programs for Employees
- Training programs to advance Employee skills
- EEO Training programs for Management Employees
- Training programs for non-profit organizations on broadcast employment opportunities
- Other activities calculated to disseminate information on broadcast employment opportunities

# Did it Work?

## Self-Assessment

- Analyze Recruitment Program to ensure effectiveness of broad outreach – still need to make sure online outreach is working
- Disseminate EEO Program to Employees and Applicants
- Review Seniority Practices to avoid discrimination
- Examine Salaries and Benefits to assure that there is no discrimination
- In Recruitment Announcements, make sure no inference of racial or gender preferences
- Ensure promotions are non-discriminatory
- Work with Unions, if any, to develop nondiscrimination programs
- Avoid tests or selection techniques that could be discriminatory
- Add on to fine for failure to recruit – if you didn't recruit enough, you didn't self-assess as you would have discovered the problem

# Write It Down!

## *Internal* Record Keeping Requirements

- List of all fulltime jobs filled, by job title
- Recruitment Sources used to fill jobs (Prong 2 groups listed separately)
- Address, telephone number and contact person for each recruitment source
- Dated copies of correspondence to all recruitment sources
- Number of interviewees for each job, and recruitment source for each interviewee
- Recruitment Source of Person Hired
- Total Number of interviewees during the year, broken down by recruitment source
- Documentation of all supplemental efforts

# Write It Down - Annual Public File Report Requirements

- List of all fulltime jobs filled, by job title
- Recruitment Sources used to fill jobs (Prong 2 groups listed separately)
- Address, telephone number and contact person for each recruitment source,
- Recruitment Source of Person Hired
- Total Number of interviewees during the year, broken down by recruitment source
- Description of all supplemental efforts

# Annual Public File Report

## Where You Can Put It

- Annual Filing Requirement - Anniversary of your Renewal filing – August 1 for Wisconsin - stays in public file until next renewal is granted
- Post Information on your Station's Website (only need to keep most recent report on website)
- FCC is checking websites.....
- Reporting Period Ends 10 Days Before Reports Due



# One Other EEO Issue to Remember – Certifications in Ad Contracts

- Must have language in ad contracts that station and advertiser will not discriminate in ad sales practices
- To stop “no Spanish, no urban dictates”
- Applies to all stations – must certify at renewal time
- Need language in contracts and, if not contracts, other sales materials
- Puts burden on stations to be sure that rep firms and advertisers are complying

# Pay Attention: Potential Problems

- Discrimination
- Insufficient Outreach
- Failing to Document Efforts or Problems
- Insufficient Supplemental Efforts
- Insufficient Paperwork
- Insufficient Self-Assessment
- Improper FCC Filings
- Misrepresentation

# EEO FOR BROADCASTERS – 2019

David Oxenford  
Wilkinson Barker Knauer, LLP

[doxenford@wbklaw.com](mailto:doxenford@wbklaw.com)

202-383-3337

[www.wbklaw.com](http://www.wbklaw.com)

[www.broadcastlawblog.com](http://www.broadcastlawblog.com)

WILKINSON ) BARKER ) KNAUER ) LLP